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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re I.M., a Person Coming Under the Juvenile Court Law.	B288648
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 17CCJP02465)

APPEAL from orders of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

Landon C. Villavaso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court sustained two of three counts in a dependency petition and ordered 12-year-old I.M. removed from both parents' custody. Only L.R. (father) appeals. Substantial evidence supports the jurisdictional finding as to father; he forfeited his challenges to the dispositional order and the jurisdictional finding as to mother. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This dependency proceeding began in December 2017. I.M.'s mother was homeless and abusing drugs. She arranged for her son to live with a former boyfriend and the former boyfriend's mother. The former boyfriend's mother, no longer able to care for I.M., took the child to the maternal grandmother's house.

The maternal grandmother immediately contacted the Department of Children and Family Services (DCFS) hotline to advise she could not care for I.M. The DCFS social worker visited I.M. and the maternal grandmother the same day. The maternal grandmother agreed to keep I.M. with her until the detention hearing.

The social worker then spoke with father. Father was not willing to take I.M. into his home. Father did not meet I.M. until the child was five or six years of age,[1] and they had no bond. I.M. lived with father briefly in 2016. Also in the home at that time were father's wife, their young daughter, and wife's two adult

[1] The appellate record is inconsistent on this point.

sons. According to father, when I.M. lived with them, the child was disrespectful and out of control and stole money from him. Father worried about the safety of his two-year-old daughter if I.M. resided in the home.

The original petition contained two counts. Count 1, pursuant to Welfare and Institutions Code section 300, subdivision (b),[2] alleged I.M. was at risk of serious physical harm and danger because father was neither able nor willing to care for him "due to the child's behavior." Count 2, also pursuant to section 300, subdivision (b), alleged mother placed I.M. at serious risk of physical harm or danger by leaving him with a friend and not making "an appropriate plan for the child's ongoing care and supervision."

Father appeared at the detention hearing. The juvenile court found him to be I.M.'s presumed father. Both parents submitted on the recommendation to detain I.M.[3]

A week before the jurisdiction/disposition hearing, the juvenile court accepted the filing of a first amended petition,

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[2] All further undesignated statutory citations are to the Welfare and Institutions Code.

[3] Nothing in the record suggests any family law custody or visitation orders were ever in place for father.

DCFS had initiated an investigation a year earlier, in late 2016, after mother reported father physically abused I.M. when the child was in father's care. Mother failed to maintain contact with DCFS, and DCFS closed the file in early 2017. The previous allegations were not revived in the current proceeding; however, at the detention hearing for this matter, DCFS asked that father's visits with I.M. be monitored based on father's admission that he slapped I.M. on one occasion when the child lived in his home.

which added a third count, also pursuant to section 300, subdivision (b), against both parents. Count 3 alleged mother had a history of drug abuse and was currently using methamphetamines, and father knew or should have known of mother's drug use and failed to protect I.M. from it.

The juvenile court conducted the combined jurisdiction/ disposition hearing on February 14, 2018. No witnesses testified; DCFS reports were received into evidence. DCFS recommended the amended petition be sustained in its entirety and I.M. ordered into an out-of-home placement. The jurisdiction/disposition report quoted father as telling the social worker, "'I don't want any services and I'm going to sign my rights over to the State, when we go back to court,'" and further recommended that father not receive family reunification services.[4]

In closing argument, father's counsel characterized his client as a nonoffending parent and urged the juvenile court to dismiss all allegations against him. Counsel added, "[Father] does not want the child. . . . I think the court can dismiss [father] from this petition, make a detriment finding. He's not seeking custody. He's actually willing to waive reunification services. So with all this information, I don't believe [DCFS] has shown [father's] unwillingness and [inability] pose a risk to this child. This case was brought because of the mother."

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[4] If the juvenile court finds by clear and convincing evidence that a parent "has advised the court that he . . . is not interested in receiving . . . family reunification services or having the child returned to or placed in his . . . custody," then family reunification services need not be provided and the child need not be placed in the parent's home. (§ 361.5, subd. (b)(14)(A).)

I.M.'s counsel agreed father should be dismissed from count 3. As to count 1, however, counsel argued the child could not be returned to mother at that time, so father's unwillingness to care for I.M. meant there was no possibility of a safe placement with either parent. Counsel for DCFS concurred: "[W]e have a . . . presumed father who walks into court and says, ['']I do not wish to have this child. I'm more or less giving up on this child.['] I don't believe that is a basis for the court to find [the father] should be non-offending, even if he decides to waive reunification services. I believe this is exactly the type of situation in which the court needs to sustain the [section 300, subdivision] (b)(1) count."

The juvenile court sustained count 1, finding father's unwillingness to provide his son with a home placed the child at risk of serious physical harm. Allegations against father were stricken from count 3, which was sustained as to mother only. Count 2, which did not include allegations against father, was dismissed. The juvenile court found by clear and convincing evidence that father voluntarily gave up his right to receive family reunification services, and it would be detrimental to place I.M. with either parent.

Father timely appealed from "[t]he court sustaining the B-1 allegation against father." Mother did not challenge the jurisdictional or dispositional findings.[5]

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[5] We review father's appeal on the merits, recognizing that mother's conduct provides an independent basis for the exercise of dependency jurisdiction over I.M. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

DISCUSSION

1. Substantial Evidence Supports the Jurisdictional Finding on Count 1

Section 300, subdivision (b)(1) describes four discrete grounds for dependency jurisdiction. The first clause concerns a child who has suffered or is at substantial risk of suffering "serious physical harm or illness, as a result of the failure or inability of his . . . parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).) Count 1 of the original and first amended petition tracked this language, and father admitted he was both unwilling and unable to care for I.M.

Nonetheless, citing *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 (*Rocco M.*), father argues his admitted failure "to provide care or supervision for [I.M.] was not neglectful conduct" and cannot provide a basis for the juvenile court's jurisdictional finding. *Rocco M.* was one of the earliest in a series of appellate decisions that held jurisdiction under section 300, subdivision (b)(1) required a finding of "neglectful conduct by the parent." (*Id.* at p. 820; see also *In re James R.* (2009) 176 Cal.App.4th 129, 135 and *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1259.)

The law changed in 2017 with *In re R.T.* (2017) 3 Cal.5th 622. There, the California Supreme Court unequivocally rejected *Rocco M.* and its progeny: "[T]he *Rocco M.* court went astray by suggesting that a parent's failure to supervise or protect a minor must always amount to neglect to satisfy section 300(b)(1). [Citation.] By doing so and setting out 'neglectful conduct' as an 'element[ ]' of section 300(b)(1) [citation], the [*Rocco M.* court] imposed a greater burden of proof than that required under the first clause. By its terms, the first clause requires no more than

the parent's 'failure or inability . . . to adequately supervise or protect the child.'" (*Id.* at p. 629.)

R.T. involved a teenager who ran away from home on numerous occasions and gave birth to two children by the time she was 17. The juvenile court sustained a dependency petition and assumed jurisdiction pursuant to the first clause of section 300, subdivision (b)(1). (*R.T., supra,* 3 Cal.5th at p. 625.) R.T.'s mother appealed, contending she was a nonoffending parent who did everything she could to control and supervise the child, but failed due to her daughter's "incorrigible behavior." (*Id.* at p. 34.) The Supreme Court affirmed, holding juvenile court jurisdiction was appropriate even though mother "did not *create* the danger that R.T. would be at risk of serious physical harm . . . [because] a parent's conduct—short of actually creating the danger a child faces—may still satisfy the standard required under the first clause of section 300(b)(1)." (*Id.* at p. 633.)

R.T. governs the result in this case. Mother's current methamphetamine use and homelessness rendered her incapable of caring for her 12-year-old child. Father did not create those dangers to I.M.'s well-being and safety; but his refusal to provide a home for, or to parent, I.M. satisfied the requisites of the first clause of section 300, subdivision (b)(1). Substantial evidence supports the juvenile court's assumption of jurisdiction over I.M. based on father's conduct. (*R.T., supra,* 3 Cal.5th at p. 637.)

2. Father Forfeited His Challenge to the Dispositional Order

Father appealed only from the juvenile court's order "sustaining the B-1 allegation." In his opening brief, father argues the juvenile court acted in excess of its jurisdiction when

it removed I.M. from his physical custody. Father did not identify a dispositional issue in his notice of appeal, however, and has forfeited this challenge. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1149–1150.)

Even without a forfeiture, father's argument fails. This is not a case where a parent failed to object in the juvenile court and, for that reason, did not preserve an issue for appeal. (See, e.g., *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.) This is a case where a parent affirmatively asked the juvenile court to enter the dispositional order he now attacks.

In any event, the dispositional order was expressly authorized by sections 361.5, subdivision (b)(14)(A) and 361, subdivision (d). Section 361.5, subdivision (b)(14)(A) gives the juvenile court discretion to order an out-of-home placement for a dependent child whose noncustodial parent, like father, refuses to accept custody (see fn. 4, *ante*). Although the juvenile court did not cite the newly enacted section 361, subdivision (d)[6] by number, it made the requisite findings for its application.

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[6] The Legislature added section 361, subdivision (d), effective January 1, 2018, six weeks before the juvenile court issued the dispositional order for I.M. Section 361, subdivision (d) provides, "A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody."

3. Father Forfeited his Challenge to the Jurisdictional Finding on Count 3

Father's notice of appeal did not encompass a challenge to the jurisdictional finding in count 3, concerning mother's current substance abuse. Father has forfeited this issue as well. (*In re Meranda P., supra,* 56 Cal.App.4th at pp. 1149–1150.) Even without the forfeiture, father would not have standing to assert an error that affects only mother. (*In re A.K.* (2017) 12 Cal.App.5th 492, 499.)

DISPOSITION

The orders are affirmed.

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DUNNING, J.*

We concur:

MANELLA, P. J

COLLINS, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.